IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3809 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANAGER

Versus

BALMUKUND GOVINDBHAI

Appearance:

1. Special Civil Application No. 3809 of 1988

MISS MAHROOK KERRAVALA with MR BP TANNA for Petitioner

MR MUKESH H RATHOD for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/06/2004

ORAL JUDGEMENT

The petitioner Ahmedabad Municipal Transport Service has challenged the judgment and award made by the Labour Court, Ahmedabad dated 1st February, 1988 in

Reference (L.C.A.) No. 489 of 1985. By the said award the petitioner is directed to reinstate the respondent on the original post with continuity of service and together with all the incidental benefits including payment of 100% backwages.

2. The facts as they appear from the record of this petition in nutshell can be stated as under :-

2.1. The respondent at the relevant time was working as conductor in the bus plied by the petitioner. He joined the service on 16th February, 1975 and was made permanent with effect from 1st November, 1981. The incident in question took place on 5th March, 1983. It is the case of the petitioner that on that day, the respondent was on duty in bus no. 894 being plied on route no. 112. At that time, the bus was checked by the Security Special Squad at the Civil Hospital bus stand and it was found that the bus was in charge of some other conductor and not the petitioner. He was, therefore, served with the chargesheet and subsequently, departmental inquiry was held against him. On the conclusion of the inquiry, the Inquiry Officer found him guilty of committing act of misconduct alleged against him. The disciplinary authority on the basis of the same dismissed him from the service vide order dated 26th September, 1984. The respondent raised demand for reinstatement, but the same was not acceded to, hence, raised industrial dispute, which was referred for conciliation to the Assistant Commissioner of Labour. However, the proceedings failed and the failure report was submitted. Ultimately, Reference under Section 10 of the Industrial Disputes Act, was made by order dated 7th January, 1985.

2.2. Before the Labour Court, the respondent filed statement of claim wherein, he averred that he joined the service of the petitioner on 16th February, 1975 and on the relevant date he was in charge of the bus bearing No. 894. According to him, the allegation made against him that he had entrusted the bus to some other conductor was not at all true. He had also averred that the inquiry which was held against him was against the principles of natural justice because he was not given adequate opportunity to defend his interest. The said statement of claim was contested by the petitioner by filing written statement at Exh. 7. It was the case of the petitioner that the respondent on 5th March, 1983 in his place had depute someone else in the concerned bus by entrusting him the ticket box, vouchers, leather bag etc. without informing the Superior Officers. Thus, according

to the petitioner, the respondent had thereby, committed act of grave misconduct and dereliction of the duty. He was, therefore, served with the chargesheet dated 10th March, 1983, to which he had submitted his explanation. It was further averred by the petitioner that the respondent was given adequate opportunity to defend his case at the inquiry and the principles of natural justice were complied with by the Inquiry Officer. Upon conclusion of the inquiry, second showcause notice dated 10th May, 1983 was served to which the respondent had replied by his letter dated 14th June, 1983. His explanation was not acceptable to the disciplinary authority and, therefore, considering the gravity of the act of misconduct, he was dismissed from the service.

3. At the hearing the respondent examined himself and also produced documentary evidence. However, the petitioner though produced documentary evidence did not examine any witness on its behalf.

3.1. At the end of the proceedings, after taking into consideration the material produced before it, the Labour Court came to the conclusion that the past record of the respondent was clear and considering the fact that on that day he had gone to answer the call of nature, he had entrusted the ticket box, vouchers, leather bag to another conductor, it does not appear to be an deliberate act of misconduct, but it was innocent mistake committed by him. The Labour Court, therefore, decided that the order of dismissal passed against the respondent was not proper and, therefore, it was required to be quashed and set aside. Accordingly, the Reference was allowed. The petitioner was directed to reinstate the respondent on his original post together with all the incidental benefits and also with continuity of service.

4. Ms. Kerravala learned advocate appearing for the petitioner has submitted that considering the fact that the entire bus alongwith the ticket box, vouchers, leather bag was handed over by the respondent to another conductor without obtaining prior permission of his superior officer, it was a grave misconduct which was required to be viewed very seriously. According to her, the decision of the disciplinary authority for dismissing the respondent was just and proper and it did not require any interference by the Labour Court. She has also submitted that considering the material on record, the judgment and award made by the Labour Court are erroneous and they deserve to be set aside. In the alternative, she has submitted that considering the facts and circumstances of the case, the respondent cannot be

allowed to go scot-free and he should be visited with some punishment.

4.1. As against that, Mr. M.H. Rathod learned advocate appearing for the respondent has supported the judgment and award made by the Labour Court and has submitted that it was merely innocent mistake that was committed by respondent and he ought not to have been dealt with so harshly. He has further submitted that the incident took place in the year 1983, the award is passed in the year 1985, the respondent is since then reinstated and he has been discharging his duty satisfactorily. The award is, therefore, not required to be disturbed.

5. Having carefully considered the record of the petition, it appears that on the date of the incident, the respondent was in charge of the bus bearing no. 894 and when it was checked at the Civil Hospital bus stand, the squad found that the respondent was not there, but someone else was there in the bus carrying leather bag, ticket box, vouchers etc. The say of the respondent is that because he had to leave the bus to urgently answer the call of the nature, he had entrusted the aforesaid articles to another conductor who was there. According to him, it was only because there was urgency and compelling necessity, he had to leave the bus and he had not deliberately committed any act of dereliction of duty. The Labour Court having gone through the entire material has also accepted the say of the respondent. This being a question of fact, it is difficult for me to reappreciate the same and come to a different conclusion. Even if, on the strength of the material placed, it is not open for me to disturb the finding given by the Labour Court while exercising jurisdiction under Article 227 of the Constitution of India. It is, therefore, very clear that the Labour Court's decision with regard to quashing of the order of dismissal passed by the disciplinary authority is just and proper.

5.1. The second aspect of the matter namely whether the respondent is required to be awarded some punishment and he should not be allowed to go scot-free is concerned, it is well settled proposition of law that unless the decision is such so as to shock the conscience of the Court, it cannot be interfered with. Miss Kerravala has placed reliance on several decisions :-

(i) Dev Singh v. Punjab Tourism Development Corporation Ltd. reported in (2003) 8 S.C.C. p.9.

(ii) Mithilesh Singh v. Union of India reported in (2003) 3 S.C.C. p.309.

(iii) Devendra Swamy v. Karnataka State Road Transport Corporation reported in (2002) 9 S.C.C. p.644.

5.2. Having carefully considered the aforesaid decisions, it is very clear that there cannot be any dispute with proposition of law laid down by the Apex Court in these decisions. However, each case will depend on the facts of that case. Considering the facts and circumstances of the case on hand, it is true that the respondent ought not to have left the bus in this manner. Considering the fact that there was urgency and he had no other alternative, but to leave the bus in this fashion, no fault can be found with him and the conclusion reached by the Labour Court cannot be termed as unreasonable or so perverse and that no reasonable person can reach to such conclusion. In the circumstances, the award passed by the Labour Court even on the second aspect is not required to be disturbed.

In the end, this petition has not merit and it deserves to be dismissed and accordingly, it is ordered to be dismissed. Rule is discharged with no order as to costs. Interim relief if any, stands vacated.

[AKSHAY H. MEHTA, J.]

21.06.2004

After dictation of the judgment is over, Ms. Kerravala informed the Court that she had received message from his client informing her that the respondent's service has been terminated by the petitioner vide order dated 21st October, 1997 on the ground of abandonment of service. She was, therefore, directed to put this fact on record by way of affidavit. The said affidavit is produced on record today and it is ordered to be taken on record.

[AKSHAY H. MEHTA, J.]

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